

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
MACON DIVISION

DANIEL ERIC COBBLE,

Petitioner,

VS.

United States Magistrate Judge

CHARLES H. WEIGLE,

Respondent.

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CIVIL ACTION NO. 5:12-CV-438 (MTT)

**ORDER**

Petitioner **DANIEL ERIC COBBLE** has filed a motion to proceed *in forma pauperis* on appeal and a motion for a Certificate of Appealability (“COA”). (Docs. 11-12).

28 U.S.C. § 1915(g) provides that a prisoner may not bring a civil action or appeal a civil judgment without prepayment of the filing fee if he has had three civil actions dismissed as frivolous, malicious, or failing to state claim upon which relief may be granted, and he is not under imminent danger of serious physical injury. On December 6, 2012, this Court dismissed Petitioner’s mandamus petition without prejudice because he had accrued four such dismissals and he did not show he was under any danger of physical harm. (Doc. 6). Because Petitioner has had these four dismissals and he is not in any danger of serious physical injury, he cannot proceed *in forma pauperis* on appeal. 28 U.S.C. § 1915(g).

Therefore, Petitioner’s motion to proceed *in forma pauperis* on appeal is hereby **DENIED**. Should he wish to proceed with this appeal, he must prepay the \$455.00 appellate filing fee.

Petitioner does not need the Court to grant a COA prior to appeal. 28 U.S.C. § 2253(c)(1) makes the grant of a COA necessary in only two kinds of appeals: (1) “the

final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court”; or (2) the final order in a habeas proceeding under 28 U.S.C. § 2255. Petitioner filed a petition for writ of mandamus, not a petition for writ of habeas corpus. (Doc. 1). Thus a COA is not required for appeal and Petitioner’s Application for a COA is **DENIED AS MOOT**.

**SO ORDERED** this 3rd day of January, 2013.

S/ Marc T. Treadwell  
MARC T. TREADWELL, JUDGE  
UNITED STATES DISTRICT COURT

Inb